IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12443 of 2004

Between:

Utukuti Venkata Apparao, s/o Appala Swamy,
r/o D.No.8-12-26, Behind Kinnera Fast Foods, Old Gajuwaka,
Visakhapatnam.

..... PETITIONER

AND

Gajuwaka Municipality, rep., by its Commissioner, Gajuwaka.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction more particularly one in the nature of writ of mandamus declaring the notices issued by the respondent one is undated in the month of May, 2004 and the last notice dated 21-06-2004 demanding the petitioner to pay Rs.10,00,000/- as illegal, arbitrary, capricious and unwarranted and also in violation of principles of natural justice and also in violation of Article 21 of the Indian Constitution and consequently to direct the respondent not to collect Rs.10,00,000/- as demanded by its officials or to pass any other order

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SRI P. SATYANARAYANA

Counsel for the Respondent: MR.VENKATESWARLU POSANI

The Court made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus to declare the notices issued by the respondent demanding the petitioner to pay Rs.10,00,000/- as illegal, arbitrary and consequently direct the respondent not to collect the said amount.

According to the petitioner, he was awarded municipal contract for collection of Aseels from Gajuwaka Municipality daily markets, weekend markets and in road margins and in the tender dated 04-03-2003 he was the highest bidder for the year 2003-2004 i.e., commencing from 01-04-2003 to 31-03-2004. On the expiry of the said contract period, the petitioner was served with the impugned notices, one in the month of May, 2004 and another on 21-06-2004, informing that he has not paid the balance of kist amount of Rs.10,00,000/- to the respondent-Municipality, in spite of issuance of several notices, and accordingly he was called upon to pay the said amount with interest at Rs.2/- per Rs.100/- per month on or before 24-06-2004, and in default, necessary action will be initiated for realisation of the said amount.

Learned Counsel for the petitioner contends that as per G.O.Rt.No.551, dated 24-04-2003, Government issued direction not to collect the aseels from the lorry owners, therefore, the petitioner did not collect the aseels from the lorry owners and incurred heavy loss.

Apart from the above, on a perusal of the affidavit, it is evident that in para 3, the petitioner asserted five reasons for the loss sustained by him viz., that there was demolition of the shops in road widening programme; that the mobile carts were not allowed in the road margin and other small business people were prevented from doing business for 320 days; and the respondent prevented the petitioner from collecting the aseels for 99 days etc., All these disputed questions of fact cannot be gone into by this Court by invoking jurisdiction under Article 226 of the Constitution of India. If the petitioner is aggrieved by the said notices, he can submit his explanation seeking remission before the respondent-Municipality and it is for the respondent-Municipality to consider the same. In the event, if the respondent-Municipality still proceeds to recover the said amount, proper course, if any, for the petitioner is to approach the competent Civil Court and can lead evidence showing that he sustained loss and that he is not liable to pay the said amount.

In view of the same, I do not see any merit in the writ petition and the same is accordingly dismissed at the admission stage.

19-07-2004

Note:

Furnish C.C. in three days.

(B/o)

ghn/tsnr

To

1. Gajuwaka Municipality, rep., by its Commissioner, Gajuwaka.

2. Two CD copies.